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SUPREME COURT, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

NO. 395

PITTSBURGH RAILWAYS COMPANY, Petitioner

v.

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, DIVISION 85

## PETITION OF PITTSBURGH RAILWAYS COMPANY FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

NO. . . . . .

PITTSBURGH RAILWAYS COMPANY, Petitioner

v.

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, DIVISION 85

## PETITION OF PITTSBURGH RAILWAYS COMPANY FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

The Petitioner, Pittsburgh Railways Company, respectfully prays that a writ of certiorari issue to review a judgment of the Supreme Court of Pennsylvania, affirming an Order of the Court of Common Pleas of Allegheny County, Pennsylvania, which directed the Petitioner to proceed with arbitration of the demands of the Respondent, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 85, for changes in and amendments to an employee pension plan.

## OPINIONS BELOW

The Opinion of the Court of Common Pleas of Allegheny County, Pennsylvania is reported at 106 Pittsburgh Legal Journal 33, and is included in the printed Record filed in the Court below at pages 34a to 45a. The Opinion of the Court below is reported at 393 Pa. 219, and a copy thereof is appended hereto in Appendix A, page 35, infra.

## JURISDICTION

The judgment of the Supreme Court of Pennsylvania sought to be reviewed is dated and was entered of record on May 26, 1958.

A petition for rehearing was filed within the prescribed period and was denied without opinion by the Court below on July 1, 1958.

Jurisdiction to review the judgment of the Court below by writ of certiorari is conferred upon this Court by 28 U.S.C. § 1257(3).

## THE QUESTIONS PRESENTED FOR REVIEW

A Retirement and Disability Allowance Plan Agreement between a Union and an Employer engaged in interstate commerce provides that if, at the end of a stated period, the parties thereto are unable to agree on changes in or amendments to the Agreement proposed by either party, the matters in issue are to be submitted for final decision to arbitrators. The Agreement does not name any arbitrator, but simply provides the method of designation of arbitrators. The Union requested numerous

changes to be made effective for a renewal period of the Agreement, and, without bargaining in good faith thereon, demanded arbitration thereof. The employer refused to arbitrate and revoked the arbitration provisions of the Agreement. The Union petitioned for enforcement of the agreement to arbitrate under the Pennsylvania Arbitration Act of 1927. The Court below held that the agreement to arbitrate was enforceable under the said Act of 1927, and affirmed an order of the Court of original jurisdiction directing the Employer to proceed with arbitration.

1. Does Section 301(a) of the Labor Management Relations Act of 1947, hereinafter set out at page 5, which confers jurisdiction upon the Federal Courts to enforce agreements to arbitrate, contained in labor contracts in industries affecting commerce, and which authorizes the Federal Courts to fashion a body of federal substantive law to be applied in such suits, supersede the Pennsylvania Arbitration Act of 1927 so as to preclude the enforcement of such agreements in the Pennsylvania State Courts pursuant to the said State Act?

2. May the Pennsylvania State Courts exercise concurrent jurisdiction with the Federal Courts over suits to enforce such agreements?

3. In the exercise of such concurrent jurisdiction, may the Pennsylvania State Courts apply state law rather than federal substantive law to such suits?

## THE CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States:

Article I, Section 8, Clauses 3 and 18:

> Section 8. The Congress shall have power * * *
>
> * * * * * * *
>
> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; [Clause 3]
>
> * * * * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. [Clause 18]

Article III, Section 2, Clause 1:

> Section 2. The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; * * *

Article VI, Clause 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

## STATUTES INVOLVED

Labor Management Relations Act, 1947:

Section 301. Suits by and against labor organizations—Venue, amount and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. [June 23, 1947, c. 120, Title III, § 301(a), 61 Stat. 156, 29 U.S.C. § 185(a)]

Pennsylvania Arbitration Act of 1927:

Section 1. Validity of arbitration agreements

A provision in any written contract, except a contract for personal services, to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. [April 25, 1927, P.L. 381, No. 248, § 1, 5 Purdon's Statutes § 161]

* * * * * * *

Section 3. Remedy on default, jurisdiction, petition, notice, hearing

The party aggrieved by the alleged failure, neglect, or refusal of another to perform under a written agreement for arbitration, may petition the court of common pleas of the county having jurisdiction for an order to show cause why such arbitration should not proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of a summons. The court shall hear and determine the matter upon the petition and answer and depositions, or, after hearing of the parties in open court, as the court may determine; and the court, upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not at issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement . * * * [April 25, 1927, P.L. 381, No. 248, § 3, 5 Purdon's Statutes § 163]

* * * * * * *

Section 14. Judgment, records, filing

Any party to a proceeding for an order confirming, modifying, or correcting an award, shall, at the time such order is filed with the prothonotary for the entry of judgment thereon, also file the following papers with the prothonotary:

(a) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire,

and each written extension of the time, if any, within which to make the award.

(b) The testimony, if taken stenographically.

(c) The award.

(d) Each notice, affidavit, or other paper, used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The arbitration shall be docketed in the prothonotary's office as if it were an action at law in the prothonotary's office, with the moving party as plaintiff and the other parties as defendant or defendants.

The judgment so entered shall have the same force and effect, in all respects as, and be subject to, all the provisions of law relating to a judgment in an action at law, and it may be enforced as such in accordance with existing law. [April 25, 1927, P.L. 381, No. 248, § 14, 5 Purdon's Statutes § 174]

## STATEMENT OF THE CASE

On October 5, 1954, Petitioner and the Respondent Union executed an Agreement known and designated as the Retirement and Disability Allowance Plan, which provides retirement and disability benefits for employees of the Petitioner, represented for collective bargaining purposes by the Respondent (Petition, par. 5, R. 6a).

The Agreement provides that it is effective from October 1, 1954 to April 30, 1957, and automatically thereafter for successive three year periods, unless changed or amended in the manner provided by the Agreement (Petition, par. 6, R. 7a). Section 23.2 of the Agreement requires a party desiring to negotiate any changes or amendments therein to give written notice to the other party not less than sixty days prior to April 30, 1957, or prior to the end of any subsequent three year period (Petition, par. 6, R. 7a). Failing agreement on the proposed changes or amendments, Section 23.2 provides for submission of the matters in issue to a Board of Arbitration upon written request of either party (Petition, par. 6, R. 7a).

Section 23.3 of the Agreement provides, inter alia, that the Board of Arbitration is to consist of three arbitrators, one to be appointed by the Petitioner, one by the Respondent, and the third by the two arbitrators so selected by the parties (Petition, par. 6, R. 8a).

On February 28, 1957, the Respondent gave written notice to the Petitioner of twelve amendments to and changes in the Agreement desired by it (Answer, Exhibit A, R. 25a).

At the first negotiating meeting to consider the aforesaid proposed changes and amendments, held on March 7, 1957, the Respondent demanded aribtration of its proposed changes and amendments and did not at that meeting (or at subsequent meetings in March and April) negotiate in good faith with respect to the changes and amendments proposed by it (Answer, par. 8, R. 22a). The Petitioner thereupon revoked the provisions of the Agreement relating to arbitration and advised the Respondent on March 7, 1957, and again in writing on March 18, 1957, of its refusal to arbitrate the Respondent's demands (Answer, pars. 9, 10, R. 22a-23a).

On April 23, 1957, the Respondent formally demanded arbitration in writing (Petition, Appendix A, R. 11a). The Petitioner answered in writing under date of April 26, 1957, that in the opinion of its counsel, the arbitration provisions of the Agreement were invalid and unenforceable and that it would not agree to submit the Respondent's proposed changes and amendments to arbitration (Petition, Appendix B, R. 16a).

On July 3, 1957, the Respondent filed a Petition in the Court of Common Pleas of Allegheny County, Pennsylvania (Petition, R. 6a), to compel Petitioner to proceed with arbitration. The Petition was filed pursuant to the provisions of Section 3 of the Pennsylvania Arbitration Act of April 25, 1927, P.L. 381, No. 248 (5 Purdon's Statutes § 161 et seq., set out hereinabove at page 6), and upon its presentation the Court entered an Order directing the Petitioner to show cause why arbitration should not proceed (R. 19a). The Petitioner duly filed its Answer (R. 21a), together with a Motion to dismiss the Respondent's Petition and to discharge

the Order to Show Cause (R. 20a). The Petitioner's Motion to dismiss was based on the grounds, inter alia: (1) that the Arbitration Act of 1927 was inapplicable to labor contracts; (2) that the said Act did not apply to the proceedings, because the relief sought was in the nature of a mandatory decree in equity, whereas only judgments at law are within the purview of the statute (see Section 14, set out hereinabove at page 6), and (3) that the Petition sought to compel the Petitioner to enter into a future agreement, the provisions of which were to be determined by a Board of Arbitration, and not simply to arbitrate the meaning and application of the provisions of an existing agreement.

Following argument, the Common Pleas Court entered an Order on October 30, 1957, pursuant to Section 3 of the Pennsylvania Arbitration Act of 1927, directing this Petitioner to proceed to arbitration (R. 46a). Petitioner appealed to the Supreme Court of Pennsylvania (R. 2a), which affirmed the Order of the lower Court on May 26, 1958, holding that the agreement to arbitrate falls within the purview of the Act of 1927 and is enforceable thereunder. Reargument was denied on July 1, 1958 (Appendix A hereto, page 39, infra).

The Federal questions sought to be reviewed on certiorari were raised in the Pennsylvania Supreme Court in the following manner: In the Brief for Appellant (pages 44-47), Petitioner cited to that Court the decision of the First Circuit Court of Appeals in *Boston Printing Pressmen's Union No. 67 v. Potter Press*, 241 F. 2d. 787 (1957), cer. den. 355 U. S. 817, 78 S. Ct. 21 (1957), in which it was held, in a suit filed pursuant to the United States Arbitration Act and Section 301 of

the Labor Management Relations Act, that agreements to submit to arbitration the prospective terms of a labor contract are unenforceable. At the oral argument of the appeal in the Supreme Court of Pennsylvania, on March 18, 1958, Petitioner cited to the Court below the decision of this Court in *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U. S. 448, 77 S. Ct. 912 (1957), holding that agreements to arbitrate grievance disputes arising under labor contracts are enforceable in the federal courts under Section 301 of the Labor Management Relations Act, and that federal substantive law, not state law, governs such enforcement proceedings. Also cited to the Court below during oral argument was Congressman Ludwig Teller's explanatory statement of January 28, 1958, accompanying his Bill (H. R. 10308) to extend the scope of the United States Arbitration Act to labor arbitration agreements. In his explanatory statement, which discusses the *Lincoln Mills* decision, Congressman Teller states that agreements to arbitrate new contract terms are rare and that his proposed amendment "does not extend to these situations; their implications on a national scale need to be clarified more fully, and consideration will have to be given to conflicting views about the desirability of judicially enforcing arbitration in these situations." The pertinent portions of the Memorandum for Appellant filed following said oral argument, by leave of the Court below, appears in Appendix B hereto, page 40, infra.

Following the action of the Court below, and its Opinion, which made no reference whatever to the foregoing federal authorities cited to it, Petitioner filed its Petition for Reargument, a copy of which is set forth in

Appendix C hereto, page 45, infra. The Petition for Reargument, which directly raises the federal questions sought to be reviewed, was denied without opinion by the Court below.

As a further showing that the federal questions were timely and properly raised in the Court below, Petitioner refers this Court to the law and practice in Pennsylvania that questions relating to the jurisdiction of its courts over the subject matter of a dispute may be raised at any time and must be considered. *Haefele v. Davis*, 373 Pa. 34, 41, 81 A. 2d 530 (1953); *Thomas v. Johnson*, 356 Pa. 570, 571, 52 A. 2d 663 (1947); 1 *Standard Pennsylvania Practice*, Sec. 55, p. 46 and cases there cited; 1 *Goodrich-Amram, Procedural Rules Service*, Secs. 1032-7, 1032-8.

Moreover, Petitioner's Petition for Reargument provided the first occasion for raising directly the questions sought to be reviewed for the reason that the decision of the Court below was the first Pennsylvania appellate decision holding that the Act of 1927 is applicable to labor contracts. Moreover, the decision amounts to an overruling of an earlier decision of twenty years' standing in *Goldstein v. International Ladies' Garment Workers' Union*, 328 Pa. 385, 196 A. 43 (1938), in which the Court below held that the Act of 1927 is inapplicable to controversies and proceedings in which mandatory relief is sought. It was the decision of the Court below, therefore, which justified for the first time the raising of the serious and important federal questions sought to be reviewed—a decision which could not fairly have been anticipated by Petitioner.

## REASONS FOR GRANTING THE WRIT AND ARGUMENT

### I. The Decision of the Court Below Raises Federal Questions of Substance Not Theretofore Determined by This Court

In this case, in directing the Petitioner to proceed with arbitration, the Court below held *for the first time* that agreements to arbitrate controversies arising under labor contracts fall within the purview of the Pennsylvania Arbitration Act of 1927, and are enforceable thereunder. Moreover, the Court below held, *also for the first time,* that such agreements are enforceable under the Act of 1927 even though the subject matter of the controversy sought to be arbitrated involves exclusively the prospective terms and conditions of a future contract.

However, Petitioner, as the operator of a mass local transportation system in the metropolitan area of the City of Pittsburgh (Petition, Par. 2, R. 6a) is unquestionably as a matter of law engaged in interstate commerce and is therefore subject to the provisions of federal labor legislation. That this is true beyond peradventure of doubt is established by the following authorities, one of which is a decision of the Court below defining the Petitioner's status in relation to interstate commerce: *Amalgamated Ass'n. of Street, Electric Railway & Motor Coach Employees of America, Division 998 v. Wisconsin Employment Relations Board,* 340 U. S. 383, 391-393, 71 S. Ct. 359, 364 (1951), holding that federal labor legislation applies to local utility and transit companies; *Pittsburgh Railways Company Sub-*

*station Operators and Maintenance Employees' Case,* 357 Pa. 379, 382, 54 A. 2d 891, 893 (1947), holding that Petitioner is engaged in interstate commerce and that its labor relations are regulated by federal labor legislation; *W. D. George and Thomas Fitzgerald, Trustees for Pittsburgh Railways Company,* 79 NLRB 750 (1948), in which it was also found that Petitioner is engaged in interstate commerce. The industrial relations of the Petitioner, therefore, are controlled by the applicable provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947. *United Mine Workers of America v. Arkansas Oak Flooring Company,* 351 U. S. 62, 74, 76 S. Ct. 559, 566 (1956).

*Textile Workers Union v. Lincoln Mills of Alabama,* 353 U. S. 448, 77 S. Ct. 912 (1957), involved a suit brought in Federal District Court by a Union in which it sought to compel the employer to submit certain grievances to arbitration as required by a collective bargaining agreement. This Court concluded in that case, and in its companion cases, that Section 301(a) of the Labor Management Relations Act (set out supra, p. 5) was not merely jurisdictional, but created substantive rights and was the source of substantive law. As thus construed, that Section, this Court held, authorized the federal courts to fashion a body of federal law for the enforcement of labor contracts, including the specific performance of promises to arbitrate grievances under such contracts. Section 301(a), this Court said, "expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best

obtained only in that way." (Ibid., 353 U. S. at p. 455, 77 S. Ct. at p. 917).

This Court also made it clear in *Lincoln Mills* that the substantive law to be applied in Section 301(a) suits is federal law, not state law, except to the extent that the latter, where compatible with the purpose of Section 301(a), is resorted to and absorbed as federal law. On these points, this Court said (353 U. S. at p. 457, 77 S. Ct. at p. 918):

> "* * * We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws. See Mendelsohn, Enforceability of Arbitration Agreements Under Taft-Hartley Section 301, 66 Yale L.J. 167. The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. See Board of Commissioners of Jackson County v. United States, 308 U. S. 343, 351, 60 S. Ct. 285, 288, 84 L. Ed. 313. Federal interpretation of the federal law will govern, not state law. Cf. Jerome v. United States, 318 U. S. 101, 104, 63 S. Ct. 483, 485, 87 L. Ed. 640. But state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy.

See Board of Commissioners of Jackson County v. United States, supra, 308 U. S. at pages 351-352, 60 S. Ct. at pages 288-289. Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights."

It would clearly appear from the foregoing that had the instant controversy been presented to the federal courts pursuant to Section 301 (a), those courts would have had jurisdiction and would have decided the matter in accordance with federal policy and law. The Court below, however, assumed jurisdiction of the controversy under a state statute and applied state policy and law, without reference whatever to federal jurisdiction, policy or law. It is readily apparent, then, that the decision of the Court below, when appraised against the scope and purpose of Section 301(a), as construed by this Court in *Lincoln Mills,* necessarily raises the substantial and important questions involving federal—state relations as to which review is sought here, supra, p. 3. While it would necessarily appear to follow from the *Lincoln Mills* decision that the exercise of state power over labor contract enforcement where interstate commerce is affected is excluded or at least curtailed by Section 301(a), such issues were not before the Court in the *Lincoln Mills* case, and, therefore, were not directly decided by it.

This is not to say, however, that this Court was unaware of the federal—state problems which would flow from its construction of Section 301(a). On the contrary, in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation,* 346 U. S. 437, 455, 75 S. Ct. 489, 498 (1955), Mr. Justice Frank-

furter, speaking of the effect which would be engendered by a holding that Section 301 authorized the federal courts to work out a federal code governing labor contracts, said:

> "Application of a body of federal common law would inevitably lead to one of the following incongruities: (1) conflict in federal and state court interpretation of collective bargaining agreements; (2) displacement of state law by federal law in state courts, not only in actions between union and employer, but in all actions regarding collective bargaining agreements; or (3) exclusion of state court jurisdiction over these matters."

Also, in his dissent to the *Lincoln Mills* and companion cases, Mr. Justice Frankfurter said (353 U. S. at p. 462, 77 S. Ct. at p. 924):

> "I have also set forth in my opinion in the Westinghouse case an outline of the vast problems that the Court's present decision creates by bringing into conflict state law and federal law, state courts and federal courts."

Moreover, in recent years a number of cases before this Court have involved important questions similar to those raised here concerning the extent to which federal labor legislation has curtailed or excluded the exercise of state power, questions which moved the Court to grant certiorari. See e.g., *Hill v. State of Florida*, 325 U. S. 538, 65 S. Ct. 1373 (1945); *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (A.F.L.)*, 346 U. S. 485, 486, 74 S. Ct. 161, 163 (1953); *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 473, 75 S. Ct. 480, 484 (1955); *United Mine Workers of America v. Arkan-*

*sas Oak Flooring Company*, 351 U. S. 62, 68, 76 S. Ct. 559, 563 (1956); *International Association of Machinists v. Gonzales*, 356 U.S. 617, 78 S. Ct. 923, 924 (1958); *International Union, etc. v. Russell*, 356 U. S. 634, 78 S. Ct. 932, 935 (1958).

Since the decision of the Court below has obviously raised federal questions of substance not as yet decided by this Court, it is respectfully submitted that a writ of certiorari should be issued to review the decision of the Court below.

## II. The Decision of the Court Below Is Contrary to Applicable Decisions of This Court.

### A. *Section 301(a) Preempts State Power*

The source of Congressional power to regulate all labor controversies in or affecting interstate commerce is plain. *Textile Workers Union v. Lincoln Mills of Alabama*, supra, 353 U. S. 448, 457, 77 S. Ct. 912, 918; *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board*, 351 U. S. 266, 271, 76 S. Ct. 794, 797 (1956). That power stems from the constitutional power of Congress to regulate commerce and to make laws necessary and proper to carry into execution powers vested by the Constitution in the government or any of its departments (U. S. Const., Art. I, § 8, cl. 3 and 18, set out supra, p. 4), including the judicial power, which extends to all cases arising under the laws of the United States (U. S. Const., Art. III § 2, cl. 1, set out supra p. 4). If the Congressional enactment "occupies the field", the control by Congress supersedes or preempts state power by virtue of the Supremacy Clause (U. S.

Const., Art. VI, cl. 2, set out supra, p. 4). *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board, supra,* 351 U. S. 266, 271, 76 S. Ct. 794, 797 (1956). It is no longer necessary, however, to argue the supremacy of federal labor legislation, for this Court specifically held in *Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees of America v. Wisconsin Employment Relations Board,* 340 U. S. 383, 399, 71 S. Ct. 359, 368 (1951) that, "The National Labor Relations Act of 1935 and the Labor Management Relations Act of 1947, passed by Congress pursuant to its powers under the Commerce Clause, are the Supreme law of the land under Art. VI of the Constitution."

Section 301(a) does not expressly declare the Congressional intent to preempt the field of labor contract enforcement. But an express declaration to that end is unnecessary when the Congressional intent to preempt the field can reasonably be implied. "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed": *Savage v. Jones,* 225 U. S. 501, 533, 32 S. Ct. 715, 726 (1912). "It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting." *Bethlehem Steel Co. v. New York State Labor Relations Board,* 330 U. S. 767, 772, 67 S. Ct. 1026, 1029 (1947).

In *Commonwealth of Pennsylvania v. Nelson,* 350 U. S. 497, 76 S. Ct. 477 (1956), in which the Pennsyl-

vania Sedition Act was held to be superseded by federal anti-sedition legislation, this Court outlined the several alternative criteria of supersession against which a federal enactment may be measured where Congress has not stated specifically whether the federal statute has occupied a field in which the States are otherwise free to legislate, viz: (1) The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it; or (2) the federal statute may touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state law on the same subject; or (3) enforcement of state acts governing the same subject matter as the federal act may present a serious danger of conflict with the administration of the federal program.

It is unnecessary to argue that each of the criteria is successfully met in this case, for any question as to the Congressional purpose to preempt the field covered by its labor legislation was laid to rest by the conclusion of this Court in *Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees of America, Division 998 v. Wisconsin Employment Relations Board*, supra, 340 U. S. 383, 397, 71 S. Ct. 359, 367 (1951), and again in *Guss v. Utah Labor Relations Board*, 353 U. S. 1, 9, 77 S. Ct. 598, 602 (1957), that:

> ". . . The legislative history of the 1947 Act refers to the decision of this Court in Bethlehem Steel Co. v. New York Labor Board, 1947, 339 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234, and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede juris-

> diction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation."

Moreover, as construed by this Court in *Lincoln Mills,* Section 301(a) in and of itself carries inescapable implications of exclusiveness and there can be no real questioning of the conclusion that Congress in the enactment of that Section occupied the field to the exclusion of State action in so far as the enforcement of labor contracts in industries affecting commerce is concerned. If Section 301(a) had been construed by this Court to be merely jurisdictional in nature, there might have been some validity to a contention that the language of that Section, providing that "suits for violation of contracts . . . *may* be brought in any district court" (Italics supplied), is not the language of preemption or exclusion of state power. But Section 301(a) is not merely jurisdictional—it creates rights and remedies, it provides the substantive law needed to resolve controversies, and it furnishes the forum. Thus, the framework of Section 301(a) is complete—it truly occupies the field. Since federal power in the field is paramount, and the scope of Section 301(a) is such that it in itself manifests the purpose of Congress to exercise its paramount authority over the subject matter of labor contract violations

where interstate commerce is affected, the exercise of state power in the same field is constitutionally foreclosed and parallel state legislation is necessarily excluded.

*B. Duplication of Remedies Is Precluded*

Also, in the *Guss* case, supra, as well as in *Amalgamated Meat Cutters, etc. v. Fairlawn Meats, Inc.*, 353 U. S. 20, 24, 77 S. Ct. 604, 606 (1957), this Court stated its belief that, in respect to its labor legislation, "Congress has expressed its judgment in favor of uniformity", an objective unattainable in the field of labor contract enforcement if the States are permitted to afford remedies parallel to or greater than that provided by Section 301(a).

The issue of the propriety of a state remedy brought to bear on the same conduct regulated by federal labor legislation was before this Court in *Garner v. Teamsters, Chauffers and Helpers Local Union No. 776*, 346 U. S. 485, 74 S. Ct. 161 (1953). That case concerned the power of a state court to restrain peaceful picketing for a purpose declared unlawful by state statute, conduct, however, which also was an unfair labor practice under the Labor Management Relations Act and within the jurisdiction of the National Labor Relations Board. In concluding unanimously that the necessity for uniformity in the regulation of labor relations subject to federal legislation precluded the application of potentially conflicting state remedies, this Court said, inter alia (346 U. S. at pp. 488-491, 74 S. Ct. at pp. 165-166):

> "Congress has taken in hand this particular type of controversy where it affects interstate com-

merce . . . The question then is whether the State, through its courts, may adjudge the same controversy and extend its own form of relief.

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties . . . Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law."

In a similar case, *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 479-480, 75 S. Ct. 480, 487-488 (1955), this Court added: "In Garner the emphasis was not on two conflicting labor statutes but rather on two similar remedies, one state and one federal, brought to bear on precisely the same conduct. * * * Controlling and therefore superseding federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised. * * * Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. Such was the situation in Garner v. Teamsters Union, supra."

The potentiality of conflict inherent in the duplication of remedies operates not only to exclude parallel state legislation, but also precludes the exercise of concurrent jurisdiction by the States in the field occupied

by the federal legislation. *Commonwealth of Pennsylvania v. Nelson*, 350 U. S. 497, 509, 76 S. Ct. 477, 484 (1956); *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 775-776, 67 S. Ct. 1026, 1031 (1947).

In his dissent in *International Association of Machinists v. Gonzales*, 356 U. S. 617, 78 S. Ct. 923, 927-928 (1958), Mr. Chief Justice Warren, emphasizing the validity of the principles declared in the *Garner* case, supra, said, inter alia:

> "This Court has consistently turned back efforts to utilize state remedies for conduct subject to proceedings for relief under the Federal Act. * * *
>
> "The principles declared in Garner v. Teamsters C. & H. Local Union, supra, were not the product of imperfect consideration or untried hypothesis. They comprise the fundamental doctrines that have guided this Court's pre-emption decisions for over a century. When Congress, acting in a field of dominant federal interest as part of a comprehensive scheme of federal regulation, confers rights and creates remedies with respect to certain conduct, it has expressed its judgment on the desirable scope of regulation, and state action to supplement it is as 'conflicting,' offensive and invalid as state action in derogation. E. g., Commonwealth of Pennsylvania v. Nelson, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640; Missouri P.R. Co. v. Porter, 273 U.S. 341, 47 S. Ct. 383, 71 L.Ed. 672; Houston v. Moore, 5 Wheat. 1, 21-23, 5 L.Ed. 19; This is as true of a state common-law right of action as it is of state regulatory

legislation. Texas & P. R. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 27 S. Ct. 350, 51 L. Ed. 553."

In this case there can be no question that the Pennsylvania Arbitration Act of 1927, as construed by the Court below, duplicates the remedies afforded by Section 301(a), as construed by this Court in *Lincoln Mills*. Both the State and the Federal Governments, under their respective statutes, seek to regulate identical conduct in the same employer-employee relationship, viz., alleged breaches of agreements to arbitrate contained in labor contracts where interstate commerce is affected. To avoid serious collision between the two, one government must necessarily yield to the other, and the Supremacy Clause decrees that it is the state government which must surrender its power in this field.

*C. Areas of Conflict*

It is unnecessary to make extensive comparisons of Pennsylvania law and procedure with Section 301(a) to ascertain whether potentiality of conflict in rights and remedies is perceptible, for this case reveals at least two clear instances of direct and positive conflict with federal law and policy. Thus, first, the state courts of Pennsylvania, applying state law and policy, will specifically enforce agreements to arbitrate new contract terms and conditions, whereas the Federal Courts will not, in suits brought pursuant to Section 301(a). Second, the same state courts will specifically enforce such agreements even though the moving party is guilty of the commission of an unfair labor practice in refusing to bargain in good faith over the new contract terms and conditions demanded by it, contrary to federal

policy and to a federally-established right of the other party.

As to the first area of direct and positive conflict, the Court below, acting pursuant to the authority of Section 3 of the Pennsylvania Arbitration Act of 1927, and without reference to or cognizance of the federal law and policy in the matter, affirmed an Order directing Petitioner to proceed to the arbitration of the Respondent's demands for changes in and amendments to an employee pension plan. On the other hand, in *Boston Printing Pressmen's Union No. 67 v. Potter Press*, 241 F. 2d. 787, cer. den. 355 U. S. 817, 78 S. Ct. 21 (1957), the First Circuit Court of Appeals affirmed Judge Wyzanski's dismissal of a Union's action filed pursuant to Section 301 and the United States Arbitration Act, whereby it sought to compel the employer to arbitrate the terms and conditions of a new contract to replace an expiring collective bargaining contract between the parties. In refusing to enforce the agreement to arbitrate the prospective terms of the new labor contract, the Court of Appeals observed that Congress had not gone so far as to authorize the federal courts to enforce legislative awards of arbitrators.

In the *Lincoln Mills* case, this Court indicated in Footnote 7 (353 U. S. at p. 456, 77 S. Ct. at p. 917) that it was not prepared to say "whether as a matter of federal law executory agreements to arbitrate are enforceable, absent Congressional approval." Also indicative of federal policy is Congressman Tellef's explanatory statement accompanying his proposed amendment to the United States Arbitration Act (41 Labor Relations Reporter 267, 19 Daily Labor Report (1958), Sec.

E-1). In his statement (Quoted Appendix B hereto, p. 41, infra), Congressman Teller noted that this Court left open in *Lincoln Mills* the question whether specific enforcement may be had of "executory agreements to arbitrate." This latter phrase, he believed, was apparently meant to apply to: (1) "a reopening clause, such as a provision for periodic reopening of wages under a long-term union-management agreement"; and (2) to "a dispute as to what the terms of a union-management agreement should be, where the parties are unable to reach an understanding."

Although his proposed amendment would extend the United States Arbitration Act to labor arbitration agreements, it would not extend to the above two situations for the reason that "their implications on a national scale need to be clarified more fully, and consideration will have to be given to conflicting views about the desirability of judicially enforcing arbitration in these situations." Agreements to arbitrate new contract terms are rare, he noted.

The foregoing authorities compel the conclusion that federal law and policy as presently constituted do not sanction the specific enforcement of agreements to arbitrate new contract demands. This Court in the *Lincoln Mills* case, supra, held that Congress, in the enactment of Section 301, has rejected by implication the common law rule against the specific enforcement of agreements to arbitrate future disputes arising under a contract. On the other hand, there is no doubt that Congressional sanction of the judicial enforcement of agreements to arbitrate the terms and conditions of a new contract is completely lacking.

Nor is this a gap in federal control under Section 301(a) which the states are left free to fill. Since the right to enforcement, as well as the remedy of specific performance, is to be measured by federal law under Section 301(a), it follows that a state court may not give greater or different relief than a federal court administering the federal law. Otherwise, the requirement that federal law will control will become meaningless, and the aim of federal labor legislation to achieve uniformity in labor relations affecting interstate commerce would be frustrated. The rights and remedies of parties to labor contracts would vary from state to state, and would depend entirely on the forum chosen.

It is settled, however, that ". . . states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations." *Hines v. Davidowitz*, 312 U. S. 52, 66, 61 S. Ct. 399, 404 (1941). "When Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." *Charleston & Western Carolina R. Co. v. Varnville Furniture Co.*, 237 U. S. 597, 604, 35 S. Ct. 715, 717 (1915); *Commonwealth of Pennsylvania v. Nelson*, 350 U. S. 497, 504, 76 S. Ct. 477, 481 (1956). See also the dissent of Mr. Chief Justice Warren in the *Gonzales* case, quoted supra, p. 24.

As to the second area of obvious conflict, there can be no question that the decision of the Court below flouts federal policy and a federally-established right of the Petitioner. The agreement to arbitrate involved in this

case encompasses only those issues as to proposed changes in, or amendments to, the pension agreement which the parties are unable to resolve by negotiation (Petition, R. 7a, 12a). Respondent's right to arbitration is, therefore, contractually conditioned, by necessary implication, upon its first attempting in good faith to negotiate the changes desired by it. Even in the absence of contractual compulsion, however, the duty to bargain in good faith is imposed upon the Respondent by federal law. Thus, Section 1 of the National Labor Relations Act, as amended (29 U.S.C. 151), declares it to be "the policy of the United States" to encourage "the practice and procedure of collective bargaining". Section 8(b) (3) of the Act [29 U.S.C. 158(b)(3)] provides that, "It shall be an unfair labor practice for a labor organization or its agents . . . to refuse to bargain collectively with an employer . . ." Section 8(d) of the Act [29 U.S.C. 158(d)] defines the phrase "to bargain collectively" in part as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder . . . ." Section 10(a) of the Act [29 U.S.C. 160(a)] empowers the National Labor Relations Board to prevent any person from engaging in any unfair labor practice affecting commerce, and expressly declares that, "This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . ."

In Paragraph 8 of Petitioner's Answer filed in the court of original jurisdiction (R. 22a), Petitioner

averred that at the first negotiating session held in response to the Respondent's demands for changes, the Respondent "demanded arbitration of its pension demands and did not then or thereafter negotiate in good faith with respect to said pension demands." Petitioner, therefore, pleaded a breach by Respondent of Petitioner's "federally established right to collective bargaining", a right as to which the action of the Court below is in direct conflict. *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 474, 75 S. Ct. 480, 484 (1955). In the latter case, this Court said (348 U.S. at page 481, 75 S. Ct. at 488):

> "We realize that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State . . . But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

See also *Amalgamated Meat Cutters, etc. v. Fairlawn Meats, Inc.*, 353 U. S. 20, 77 S. Ct. 604 (1957).

Since neither the court of original jurisdiction nor the Court below took any account whatever of Petitioner's allegation of the refusal of the Respondent to bargain in good faith, and did not allow a hearing on that issue, it follows that the Pennsylvania courts, pursuant

to state law and policy, will specifically enforce agreements to arbitrate new labor contract terms where interstate commerce is affected despite the moving party's failure to bargain in good faith over the new terms prior to its demand for arbitration. Such a course, it is submitted, is in direct conflict with federal policy to encourage and to enforce collective bargaining, deprives the Petitioner of a federally-established right, and encroaches upon an area within the exclusive jurisdiction of the National Labor Relations Board.

Since, therefore, the conflict of the parallel legislation involved in this case with Section 301(a) and federal policy is direct and positive, that legislation must be declared invalid as to controversies within the scope of Section 301(a).

D. *Federal Court Jurisdiction Is Exclusive*

As construed by this Court, Section 301(a) compels the conclusion that actions for the enforcement of labor contracts falling within its scope lie within the exclusive jurisdiction of the federal courts. Of that Section and the role of the federal judiciary thereunder, this Court said, inter alia, in *Lincoln Mills* (353 U. S. at pp. 455-457, 77 S. Ct. at pp. 917-918):

> ". . . It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.
>
> * * * * * * *
>
> ". . . We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national

> labor laws . . . Federal interpretation of the federal law will govern, not state law . . . Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights.
>
> "It is not common for federal courts to fashion federal law where federal rights are concerned . . . Congress has indicated by § 301(a) the purpose to follow that course here. There is no constitutional difficulty . . . A case or controversy arising under Section 301(a) is, therefore, one within the purview of judicial power as defined in Article III."

Concurrent jurisdiction by state courts over controversies within the scope of Section 301(a) is utterly incompatible with the foregoing powers, functions and duties of the federal courts under that Section, particularly for the reason stated by this Court, viz: that federal policy requires that "federal courts should enforce these agreements . . . and that industrial peace can be best obtained only in that way." The role of the federal judiciary in controversies within Section 301 appears to be cast in much the same mold as that of the National Labor Relations Board in matters vested within its jurisdiction.

Therefore the same considerations of uniformity and of federal power, policy and supremacy which have impelled this Court in many cases to declare that Board jurisdiction over matters delegated to it is exclusive, require also the exclusion of state power and jurisdiction over controversies cognizable by the federal courts under Section 301.

In any case, even if the state courts were empowered to exercise concurrent jurisdiction with the federal courts over controversies within the scope of Section 301, *Lincoln Mills*, as well as the Supremacy Clause, requires the application of federal law, not state law. Otherwise, confusion and conflict between federal and state courts would certainly occur and the purpose of Congress to effect uniformity in the regulation of industrial relations could not be achieved. The rights and remedies of the parties would be controlled not by a uniform federal law but by the choice of the forum.

For all of the reasons stated hereinabove, it is respectfully submitted that the Pennsylvania courts were without jurisdiction over the instant controversy between the parties, and that in any case the Court below erred in holding that the agreement to arbitrate was within the purview of the Pennsylvania Arbitration Act of 1927 and enforceable thereunder. That decision is clearly not in accord with applicable decisions of this Court cited above, particularly the *Lincoln Mills* and *Garner* decisions, and, therefore, the issuance of a writ of certiorari to review that decision is respectfully requested.

### III. Conclusion

The decision of the Court below, applying solely state law and policy to a controversy cognizable in the federal courts under Section 301(a) of the Labor Management Relations Act of 1947 and there determinable in accordance with federal law and policy, raises serious federal questions involving federal-state relations in industrial controversies which require resolution in order to determine the extent to which Section 301(a) has curtailed state power.

For the foregoing reason and the additional reasons that the questions raised in this Petition have not heretofore been decided by this Court and that the decision of the Court below is not in accord with applicable decisions of this Court, it is respectfully submitted that this Petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES MONROE THORP, JR.,
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Of Counsel

## APPENDIX A

### IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY and MOTOR COACH EMPLOYES OF AMERICA, DIVISION 85
v.
PITTSBURGH RAILWAYS COMPANY, Appellant

No. 56 March Term, 1958
Appeal from the Order of the Court of Common Pleas of Allegheny County at No. 127 October Term, 1957.

**Opinion.**

Filed: May 26, 1958

ARNOLD, J.

Defendant, Pittsburgh Railways Company, appeals from the order of the court below requiring it to submit to arbitration a dispute arising out of an agreement between it and plaintiff, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 85, a union representing certain employes of defendant.

Plaintiff has been the bargaining agent for these employes for a period of years, during which it entered into collective bargaining agreements with defendant and its predecessors. On October 5, 1954, the parties entered into an agreement designated "Retirement and Disability Allowance Plan." As its name implies, the plan was set up to provide for retirements and pensions for employes, and was made effective October 1, 1954, for a three-year period. It also provided for automatic renewal for successive three-year periods ". . . unless changed or amended as herein provided." In the event that either party should desire to negotiate changes, the agreement provided that notice be given to the other

party at least sixty days before the end of the contract period; and "if the parties cannot reach an agreement on proposed changes . . . the matter or matters in issue *shall be submitted to a Board of Arbitrators.*" (Italics Supplied). This board was to be composed of three persons—one chosen by the Company, one by the Union, and a third by the persons appointed by the parties.

Plaintiff, in February, 1957, and defendant, in March, 1957, requested changes in the Plan; and negotiations, to no avail, were had in March and April. Pursuant to the agreement, and on April 23, 1957, plaintiff demanded arbitration, which was refused by the Company. Thereupon the Union filed its petition in the court below asking enforcement of the provision to submit to arbitration, either under the Act of 1927, P.L. 381, 5 PS §161, et seq. or under the common law. The court thereafter entered an order requiring arbitration, and defendant appeals, contending that the court was powerless so to act.

Our arbitration act provides, inter alia: (1) "A provision in any written contract, except a contract for personal services, to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform . . . any part thereof, . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"; (2) "The party aggrieved . . . may petition the court of common pleas of the county . . . for an order to show cause why such arbitration should not proceed . . . The court, upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not at issue, . . . .

shall make an order directing the parties to proceed to arbitration . . ."

There is no question that the agreement to submit to arbitration was made, nor is there any doubt that the Company failed to comply therewith. It contends, however, that the Act is inapplicable to the instant question. First, it contends that an award by the arbitrators would be mandatory in nature and under Goldstein v. International Ladies Garment Workers Union, 328 Pa. 385, 196 A. 43, such an award cannot be enforced because it cannot "be made the subject of judgments in actions at law." But such decision was based on Section 14 of the Act, and dealt only with "enforcement" of an award; and merely because here an award to be rendered *might* be mandatory in nature is not sufficient reason for denying the relief requested. Having determined that the agreement was made and that there was a failure to comply, as required by the Act, the court ". . . shall make an order directing the parties to proceed to arbitration." It is not, at this point in the proceedings, dependent upon what form the award may take. We are faced with a petition to compel arbitration, not enforcement of an award; and there is nothing to establish the contention of defendant that enforcement of the agreement to arbitrate results in a "vain and useless act." This will be met when the question arises—not at this stage of the proceedings.

Defendant's next contention is that this arbitration clause is not a provision in a written agreement "to settle . . . a controversy thereafter arising out of such contract," the term "controversy" meaning only one involving the meaning and application of the provisions of the agreement. As the court below declared:

"The contract in question was concerned with the pension rights of the Company's employees, and the parties, apparently recognizing the need for a continuing agreement in this regard, entered into such a continuing agreement with the provision that changes could be made in its terms at periodic intervals." Recognizing that disputes over such changes might arise, the parties proceeded to establish the procedure for resolving them. We find nothing in the Act nor in the cases to preclude such an arrangement or denying its enforcement. To say that "controversy" in the Act encompasses only disputes as to meaning and application of the provisions of the agreement is to supply words not existent in the Act. Carrying the provisions of the Act to their logical conclusion, they must be taken to provide the means of resolving the disputes over amendments as the parties voluntarily agreed. In United Electrical, Radio and Machine Workers of America, Local 411, C.I.O. v. National Pneumatic Co., 134 N.J.L. 349, 48 A. 2d 295, the court declared: "The purpose desired in labor contracts is that disputes, as the contract in question expressly provides, shall be promptly settled in the interest of a continuance of sound relations between the Union and the Company. If the contract so provides, as it does in this case, it is not the function of the Court to so construe it as to defeat the intention of the parties." This is particularly applicable here, where the retirement and pension rights of employees of a public transportation company are the subject of arbitration.

Defendant contends, lastly, that the instant contract involves "personal services," and therefore that its enforcement is specifically excluded in the Act. But it fails

to recognize the distinction fairly made between contracts for personal services and collective bargaining agreements. "Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone. The negotiations between union and management result in what has often been called a trade agreement rather than a contract of employment": J. I. Case Co. v. National Labor Relations Board, 321 U.S. 332, 334, 335, 88 L. Ed. 762, 766. The "personal services" exclusion can only be taken to apply to the employe's own contract of employment; otherwise construed, would be to write into the meaning of a collective bargaining agreement something never intended by the parties. See also, International Ladies' Garment Workers Union v. Nazareth Mills Company, 87 D. & C. 589.

The instant agreement definitely and conclusively falls within the purview of the Act, and is enforceable thereunder. Finding as we do, there is no necessity for deciding whether the agreement is enforceable under common law principles.

Order affirmed.

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**Order [Denying Reargument]**

July 1, 1958

Petition denied

PER CURIAM

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## APPENDIX B

### Memorandum for Appellant

*To the Honorable the Chief Justice and the Associate Justices of said Court:*

At the conclusion of Appellant's oral argument, counsel requested and was granted leave by your Honorable Court to file the within memorandum in reply to certain statements in Appellee's Brief.

At page 22 through page 25 of its Brief, Appellee argues that, in the field of labor contracts, agreements to arbitrate new contract terms are not uncommon and that therefore the Pennsylvania Legislature must have considered this type of arbitration when it enacted the Arbitration Act of 1927. This statement is incorrect and the quotations in Appellee's Brief on the point are not authority therefor. On the contrary, quasi-legislative arbitration of new contract terms is rare. As recently as January 28, 1958, Congressman Ludwig Teller, of New York, the author of several works on employer-employee relations and labor matters, proposed an amendment to the United States Arbitration Act [HR 10308] which would extend that Act to arbitration of employer-employee disputes. In his statement [41 Labor Relations Reporter 267] Congressman Teller referred to the opinion of the United States Supreme Court in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, which held that labor clauses in labor contracts in industries affecting commerce could be enforced under Section 301 of the Taft-Hartley Act, and that federal substantive law, not state law, governs such enforce-

ment proceedings. The following portion of Congressman Teller's statement is particularly pertinent to the case at bar (41 LRR at pp. 269-270):

"The Supreme Court in the Lincoln Mills case left open the question whether specific enforcement may be had not only of undertakings to arbitrate grievance disputes under union-management agreements but also of 'executory agreements to arbitrate.' The phrase is not too happy and requires clarification, since the Red Cross Line case (264 U.S. 109) cited by the Court for the phrase involved arbitration of a dispute arising out of a charter party agreement. The situation there, in other words, was similar to that existing in the Lincoln Mills case. *Four main possible situations for labor arbitration are: (1) submission of an existing incidental dispute, apart from any pre-existing agreement; (2) the future disputes clause or 'grievance dispute' under a union-management agreement; (3) a re-opening clause, such as a provision for periodic reopening of wages under a long-term union-management agreement; (4) a dispute as to what the terms of the union-management agreement should be, where the parties are unable to reach an understanding.* The first and second types of situation (apart from their applicability to employer-employee relations) are dealt with in the United States Arbitration Act and are covered by the Lincoln Mills decision.

"Apparently the phrase 'executory agreements to arbitrate' is meant to apply to the third and fourth. Both are reached by the New York Arbi-

tration Statute, the third by an amendment adopted in 1937, the fourth by a 1952 amendment.

"Whether specific enforcement may be had under Section 301, of arbitration agreements in the third and fourth situations, is now pending in the courts. H.R. 10308 does not extend to these situations; their implications on a national scale need to be clarified more fully, and consideration will have to be given to conflicting views about the desirability of judicially enforcing arbitration in these situations. *An estimated 90 percent of collective bargaining agreements provide for arbitration of grievance disputes, whereas agreements to arbitrate new contract terms are rare.* H.R. 10308, if enacted into law, as I hope it will be, should serve as a good basic beginning in the needed task of making our federal laws on labor arbitration consistent and effective". (Italics supplied)

Although we are dealing with a pension agreement in the case at bar, such an agreement stands on the same footing as a collective bargaining agreement under all of the federal decisions. [See *Inland Steel Co. v. NLRB*, 17 F. 2d 247 (CA 7, 1948); *NLRB v. Jacobs Mfg. Co.*, 196 F. 2d 680 (CA 2, 1952); *In re Allied Mills, Inc.*, 82 NLRB 854 (1949)].

Under the facts of the case at bar, we are dealing with a dispute mentioned in [4] above, which is a dispute as to what the terms of Union-Management Agreement should be where the parties are unable to reach an understanding. Contrary to the statement at page 25

of Appellee's Brief, agreements to arbitrate new contract terms are rare.

At page 31 of its Brief, Appellee cites, out of its context, certain language from the Opinion of Judge Wyzanski in *Boston Printing Pressmen's Union v. Potter Press,* [141 Fed. Supp. 553, 556]. The said language quoted in Appellee's Brief is from Judge Wyzanski's discussion concerning the constitutionality of legislation directing arbitration of quasi-judicial as well as quasi-legislative, retrospective as well as prospective arbitrations. In the same paragraph in which said quoted language appears, and in connection therewith, Judge Wyzanski stated:

> "Without so deciding, this Court may assume that there is no infirmity in Art. III, Sec. 2 of the Constitution which precludes Congress from conferring upon courts the power to enforce a quasi-legislative arbitration provision. It is familiar practice for Congress to give federal courts sitting in bankruptcy or corporate reorganization matters the power to prescribe future relations between classes of security holders. . . ."

Clearly the Court was referring here to the constitutional power of the Congress to enact legislation of the type referred to in items 3 and 4 in Congressman Teller's statement. The holding of the *Boston Printing Pressmen's Union* case, as pointed out in Appellant's Brief, is that the term "existing controversy arising out of a contract" under the Federal Arbitration statute [Appellant's Brief, page 44] which is substantially identical with the Pennsylvania Arbitration Act

of 1927, [Appellant's Brief, page 31], does not include prospective or quasi-legislative arbitration and, accordingly, does not authorize the Federal Courts to compel an employer to submit to arbitration the terms of a new collective bargaining agreement although the expiring agreement contained a provision that all unreconcilable questions regarding the new contract should be decided by arbitration. As pointed out in Appellant's Brief, page 44, Judge Wyzanski's decision was affirmed by the First Circuit Court of Appeals and the U. S. Supreme Court refused certiorari.

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Respectfully submitted,

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## APPENDIX C

### Petition for Reargument

*To the Honorable the Chief Justice and the Associate Justices of said Court:*

And now comes PITTSBURGH RAILWAYS COMPANY, Appellant above-named, and petitions this Honorable Court to grant a reargument in the above case for the following reasons:

1. Jurisdiction of the controversy between the parties is vested exclusively in the Federal Courts and the Court below acted without authority.

2. This Court, as well as the Court below, ignored the fact that the relief sought could not have been otherwise than mandatory in nature.

### I. JURISDICTION

1. On May 26, 1958, this Honorable Court handed down its Opinion in the above-entitled matter affirming the Order of the Court below, which required the defendant Company, under the authority of the Pennsylvania Arbitration Act of 1927, to submit to arbitration the demands of the plaintiff Union for changes and amendments to an employee pension plan.

2. The Decision of this Honorable Court holding that the contract between the parties falls within the purview of the Arbitration Act of 1927 and is enforceable thereunder raises serious federal questions, including that of jurisdiction, which must be resolved. Appellant, in its Memorandum for Appellant filed with the Court following oral argument, cited to the Court the United

States Supreme Court's decision in *Textile Workers Union v. Lincoln Mills of Alabama,* 353 U. S. 448, 77 S. Ct. 912 (1957) and Congressman Ludwig Teller's explanatory statement, reported in 41 Labor Relations Reporter 267, which accompanied his proposed amendment to the United States Arbitration Act (HR 10308). Also cited and discussed in the Brief for Appellant (pp. 44-47) is a recent decision of the First Circuit Court of Appeals in *Boston Printing Pressmen's Union No. 67 v. Potter Press,* 241 F. 2d 787 (1957), cer. den. 78 S. Ct. 21 (1957). These authorities, whose force and effect were overlooked by this Court, indicate not only that there exists federal policy and substantive law as to which the decision of this Court is in direct conflict, but that the issue in this case lies in an area over which the Congress of the United States has the exclusive power of regulation under the Commerce Clause of the United States Constitution. Moreover, Congress has asserted that power of regulation, *with the result that the power of this State and of its Courts over the issue in this case is suspended and cannot constitutionally be exercised.*

3. The *Lincoln Mills* case, supra, involved a suit by a Union, brought in Federal District Court, in which the Union sought to compel the employer to submit certain grievances to arbitration as required by a collective bargaining agreement. The suit was based, inter alia, on Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. Sec. 185, which provides:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor

organizations, may be brought in any district court of the United States, having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

Section 301, it is to be noted, applies to suits for violation of labor contracts in industries "affecting commerce." There can be no question that the defendant is an industry affecting commerce and that Section 301 therefore applies to its labor contracts. As this Court itself observed in *Pittsburgh Railways Company Substation Operators and Maintenance Employees' Case*, 357 Pa. 379, 382 (1947):

"Pittsburgh Railways is admittedly engaged in interstate commerce within the meaning of the National Labor Relations Act . . . Its operations have a substantial effect upon interstate commerce."

See also *W. D. George and Thomas Fitzgerald, Trustees for Pittsburgh Railways Company*, 79 NLRB 750 (1948),

in which the National Labor Relations Board also found that the defendant was engaged in interstate commerce.

In the *Lincoln Mills case*, the Supreme Court of the United States ruled that Section 301 was more than jurisdictional in nature, and in fact authorized federal courts to fashion a body of federal law for the enforcement of labor contracts, including the specific enforcement of promises to arbitrate grievances arising under such contracts. The language of the Court leaves no doubt that, as a matter of federal policy, the exclusive forum for the enforcement of labor contracts where the contracting parties are engaged in an industry affecting commerce lies in the federal courts. Thus, that Court, in reviewing the legislative history of Section 301, concluded:

> "Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way."

The Court also made it clear that the substantive law to be applied in the enforcement of labor arbitration agreements is federal law, not state law. As to this the Court said:

> "The question then is, what is the substantive law to be applied in suits under §301 (a)? We conclude that the substantive law to apply in suits under §301 (a) is federal law which the courts

must fashion from the policy of our national labor laws. See Mendelsohn, Enforceability of Arbitration Agreements Under Taft-Hartley Section 301, 66 Yale L.J. 167. The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. See Board of Commissioners v. United States, 308 U.S. 343, 351. Federal interpretation of the federal law will govern, not state law. Cf. Jerome v. United States, 318 U.S. 101, 104. But state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate the federal policy. See Board of Commissioners v. United States, supra, 351-352. Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights.

"It is not uncommon for federal courts to fashion federal law where federal rights are concerned. See Clearfield Trust Co. v. United States, 318 U.S. 363, 366-367; National Metropolitan Bank v. United States, 323 U.S. 454. Congress has indicated by §301 (a) the purpose to follow that course here. There is no constitutional difficulty. Article III, §2 extends the judicial power to cases 'arising under * * * the Laws of the United States. * * *'

"The power of Congress to regulate these labor-management controversies under the Commerce Clause is plain. Houston & Texas R. Co. v. United States, 234 U.S. 342; Labor Board v. Jones & Laughlin Corp. 301 U.S. 1, 1 LRRM 703. A case or controversy arising under §301 (a) is, therefore, one within the purview of judicial power as defined in Article III."

Since the Supreme Court of the United States has ruled so unequivocally that federal law fashioned by the Federal Courts is to control the enforceability of labor arbitration agreements, and that federal policy requires that such agreements be enforced in the Federal Courts, because "industrial peace can be best obtained only in that way", the conclusion appears unassailable that the Court below did not have jurisdiction over the controversy of the parties herein and that it and this Court as well erred in holding that the arbitration agreement in issue in this case falls within the purview of the Arbitration Act of 1927 and is enforceable thereunder. Congress, by the enactment of Section 301, conferring federal jurisdiction over all suits for violation of contracts between Unions and employers engaged in an industry affecting commerce, has effectively foreclosed state action and, therefore, the Court below could not constitutionally entertain the Petition of the plaintiff in this case.

The *Lincoln Mills* decision is undoubtedly of vast significance as the pilot case announcing that labor arbitration in this country has entered upon a new era of federal cognizance, recognition and enforcement. Whenever commerce is affected, arbitration provisions

in labor contracts are now enforceable in the Federal Courts under federal law irrespective of the law of the state in which the controversy arises. Federal substantive law on the issue is as yet undeveloped and unclarified, but whatever it is it supersedes and supplants state substantive law, and state law, aside from the extent to which it may be absorbed into federal law, has no independent existence. The *Lincoln Mills* decision is now a part of the pattern of expanding federal intervention in the area of the labor-management relationship which at the same time operates to restrict the scope of jurisdiction of state courts and agencies. There can be little doubt as to these conclusions, for they are in harmony with a uniform system of national law in the field of labor-management relations, the need for which has been increasingly emphasized by the United States Supreme Court.

Although many authorities, state and federal, could be cited, it would be difficult to find a more parallel or pertinent case on the issues here involved than the *Pittsburgh Railways Company Substation Operators and Maintenance Employees' Case,* 357 Pa. 379, supra. In that case the Pennsylvania State Labor Relations Board carved out and certified a craft unit composed of certain employees theretofore represented by this plaintiff. The Court below affirmed the order of the State Board, and this plaintiff and this defendant both appealed to this Court. After argument, this Court ordered reargument on the question of jurisdiction because of "the possible effect of the decision of the Supreme Court of the United States in *Bethlehem Steel Company v. New York State Labor Relations Board* and *Allegheny Ludlum Steel Cor-*

*poration v. Kelley*, 330 U. S. 767, 67 Sup. Ct. 1026". In the latter cases, the United States Supreme Court held that the action of the New York State Labor Relations Board in certifying a bargaining unit of the foremen of an employer engaged in interstate commerce was void as an unconstitutional encroachment upon the power of the federal government.

The appellee State Board in the *Pittsburgh Railways Company* case, supra, contended that it had concurrent jurisdiction with the National Board and that the exercise of state power can be suspended only when the issue presented has been before the National Board or where the State Board enforces a policy at variance with or repugnant to that of the National Board. In rejecting these contentions and reversing the lower court for want of jurisdiction in the State Board, this Court said, inter alia, (pp. 383-386):

> "The power of a state to regulate a given subject may be suspended if Congress deems it necessary and advisable, and by a proper exercise of a delegated power does enact legislation with regard thereto. . . . When Congress, for the purpose of eliminating burdens upon the free flow of commerce between the states, struck at abuses prevalent among industries engaged in the production of goods for interstate commerce and enacted the National Labor Relations Act, it secured to all employees encompassed within the orbit of its power the right of collective bargaining through representatives of their own choosing and restrained employers from committing certain designated unfair labor practices.

"The National Labor Relations Board was created as the administrative agency by and through which the respective benefits and sanctions were to be secured and imposed . . .

* * * * * *

"Where Congress has not exercised its power with respect to a given employer-employee relationship, regulation thereof by the state is permissible. . . .

"The subject matter of the instant dispute does not constitute or represent 'a separable or distinct segment of the matter covered by the federal statute'. Nor can it be said that 'the federal agency has not acted on that segment.' See *Bethlehem Steel Company v. New York State Labor Relations Board,* supra, 67 Sup. Ct. at 1030. The issue,—determination of the collective bargaining unit and collective bargaining agent,—represents a basic and fundamental part of the Congressional regulation. Congress, having exercised its power, did not intend to permit state action with regard thereto. In *Bethlehem Steel Company v. New York State Labor Relations Board,* supra, Mr. Justice JACKSON said (67 Sup. Ct. at 1031): 'Comparison of the State and Federal statutes will show that both governments have laid hold of the same relationship for regulation, and it involves the same employers and the same employees . . . If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other.' It becomes immaterial, therefore, that appellee might

act in harmony and not inconsistent with the policy of the federal board. '. . . power to decide a matter can hardly be made dependent on the way it is decided': *Bethlehem Steel Company v. New York State Labor Relations Board,* supra, 67 Sup. Ct. at 1031.

"Appellant further contends that it may act until the National Board has acted in the same case. The Supreme Court, dismissing an identical contention in the *Bethlehem Steel* case, supra (67 Sup. Ct. at 1031), said: '. . . we do not think that a case by case test of federal supremacy is permissible here.' Determination of permissible exercise of state power in circumstances presented depends not upon possible inconsistent state action but upon the affirmative exercise of power by Congress. A state may not be permitted to exercise powers dependent upon consistency or inconsistency with federal policy. Congress has exercised its power over the identical relationship and properly vested jurisdiction for determination and regulation thereof in an administrative agency created by it for that purpose. In the *Bethlehem Steel* case, supra, the New York State Labor Relations Board designated foremen as a proper bargaining unit at a time when, by reason of the vacillation of the National Labor Relations Board upon that issue, such appropriate unit would not have been certified by it. By asserting jurisdiction to determine the collective bargaining unit, the state board was held to have exceeded its power and to have unconstitutionally encroached upon the power of the federal government. The clear implication of the decision of the

Supreme Court of the United States in *Bethlehem Steel Co. et al. v. New York State Labor Relations Board,* supra, is that wherever the employer-employee relationship is one over which Congress has the power of regulation and with regard to which Congress has acted, state power is suspended and cannot constitutionally be exercised. To permit the exercise of state power in such circumstances would effectively negative the supremacy of Congressional legislation.

"The criterion to determine validity of the exercise of state power is not whether the agency administering federal law has acted upon the relationship in a given case; rather, it is whether Congress has asserted its power to regulate that relationship. The Pennsylvania Labor Relations Board could not constitutionally entertain the petition for determination of the bargaining agent. In so doing, it was acting upon subject matter, regarding which Congress had asserted its power of regulation and jurisdiction over which had properly been delegated to the National Labor Relations Board."

Since Congress has expressed its judgment in favor of uniformity in the field of labor regulation, the United States Supreme Court has consistently held that state jurisdiction has been preempted by our federal labor laws. See e.g. *International Union v. O'Brien,* 339 U. S. 454, 70 S. Ct. 781 (1950); *Hill v. Florida,* 325 U. S. 538, 65 S. Ct. 1373 (1945); *Amalgamated Association v. Wisconsin Employ. Rel. Bd.,* 340 U. S. 383, 71 S. Ct. 359 (1951); *Garner v. Teamsters Union,* 346 U. S. 485, 74

S. Ct. 161 (1953); *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 75 S. Ct. 480 (1955); *United Mine Workers v. Arkansas Oak Flooring Co.*, 353 U. S. 20, 76 S. Ct. 559 (1956); *Guss v. Utah Labor Relations Board*, 353 U. S. 1, 77 S. Ct. 598 (1957); *Amalgamated Meat Cutters v. Fairlawn Meats, Inc.*, 353 U. S. 20, 77 S. Ct. 604 (1957); *San Diego Council v. Garmon*, 353 U. S. 26, 77 S. Ct. 607 (1957).

In the instant case, comparison of the Arbitration Act of 1927, as construed by this Court in this case, and Section 301, as construed by the United States Supreme Court in the *Lincoln Mills* case, shows that both governments are regulating a specific subject matter in the same employer-employee relationship, viz., alleged breaches of an agreement to arbitrate contained in labor contracts where the employer is engaged in an industry affecting commerce. Since that relationship and that specific subject matter are within the power of Congress to regulate under the commerce clause, and Congress has asserted or exercised that power through the enactment of Section 301, state power in the premises is suspended and cannot be exercised constitutionally. It therefore follows that plaintiff's right to specific performance in this case is determinable under Section 301 and not under the Act of 1927, that federal substantive law, not state law, is applicable, and that jurisdiction lies in the federal courts to the exclusion of the state courts. It cannot be denied that the newly-recognized federal right and remedy would be seriously and adversely affected if an independent action under state law were deemed to survive. Conflicts between federal and state courts would certainly occur and delicate prob-

lems of federal-state relationships would undoubtedly be created. Forum shopping would be encouraged.

4. Moreover, even if the state courts were empowered to exercise concurrent jurisdiction with the federal courts, that power could not be exercised inconsistently or at variance with that decreed by federal policy and federal substantive law. Article VI of the United States Constitution declares the supremacy of the laws of the United States. The decision of this Court in this case, however, is in direct conflict with federal policy and substantive law which, as presently constituted, does not authorize the enforcement of agreements to arbitrate new contract terms and conditions. Thus, the First Circuit Court of Appeals, in *Boston Printing Pressmen's Union No. 67 v. Potter Press,* 241 F. 2d 787 (1957), cer. den. 78 S. Ct. 21 (1947), cited and discussed at pages 44-47 in the Brief for Appellant, affirmed the dismissal of a Union's action to compel the employer to arbitrate new terms and conditions to be incorporated into the labor contract between the parties. The suit was based on Section 301 and the United States Arbitration Act. The Court of Appeals, observing that Congress had not gone so far as to authorize the federal courts to enforce legislative awards of arbitrators, refused to enforce the agreement to arbitrate the prospective terms of the new labor contract.

In the *Lincoln Mills* case, the Supreme Court indicated in Footnote 7 at page 917 of 77 S. Ct., that it was not prepared to say "whether as a matter of federal law executory agreements to arbitrate are enforceable, absent Congressional approval."

In Congressman Teller's explanatory statement accompanying his proposed amendment to the United States Arbitration Act (41 Labor Relations Reporter 267), which is discussed at pages 1 to 3 inclusive of the Memorandum for Appellant, he observes that the Supreme Court left open in the *Lincoln Mills* case the question whether specific enforcement may be had of "executory agreements to arbitrate". This latter phrase, he believed, was apparently meant to apply to: "a reopening clause, such as a provision for periodic reopening of wages under a long-term union-management agreement"; and to "a dispute as to what the terms of a union-management agreement should be, where the parties are unable to reach an understanding." His proposed amendment, he stated, does not extend to those two situations for the reason that "their implications on a national scale need to be clarified more fully, and consideration will have to be given to conflicting views about the desirability of judicially enforcing arbitration in these situations." Agreements to arbitrate new contract terms, he noted, are rare.

From the foregoing authorities it may properly be concluded that federal law and policy as presently constituted do not sanction the specific enforcement of agreements to arbitrate new contract terms, and it appears extremely doubtful that that law and policy will change in the absence of Congressional approval.

In summary, it is submitted that specific enforcement of agreements to arbitrate contained in labor contracts where commerce is affected is in an area of labor-management relations of which the federal government has taken exclusive hold, and as a result suits for the

specific enforcement of such agreements are not within the jurisdiction of state courts. But even if the latter were authorized to exercise concurrent jurisdiction, state courts are bound to apply federal substantive law and not state law. That was not done in this case and therefore this Court should reconsider its decision and reverse the Court below.

## II. NATURE OF THE RELIEF REQUESTED

In affirming the Order of the Court below, and concluding that: ". . . merely because here an award to be rendered *might* be mandatory in nature is not sufficient reason for denying the relief requested", this Court misapprehended or completely overlooked the actual nature of the demands which the plaintiff Union seeks to compel the defendant Company to arbitrate. Those demands (R. 25a—31a, discussed Appellant's Brief, p. 7) seek twelve extensive changes in and amendments to the pension plan, the granting of *any one of which* would necessarily and incontrovertibly require relief in the nature of a mandatory decree. Not one of the Union's demands, if granted, could be the subject of a judgment in an action at law. Each of the demands, if granted, requires an award compelling the amendment of the provisions of an existing contract. In fact, the arbitration clause in issue does not contemplate the arbitration of any matter other than changes and amendments in the pension plan (R. 7a). This is, therefore, not a case where an award *might* be mandatory in nature, but a case where any award granting relief as to any of the plaintiff's demands *must* be mandatory in character. There is no alternative except rejection by the Board of Arbi-

tration of *all* of the plaintiff's demands. In such case, of course, arbitration would be a vain and useless proceeding and ought not be compelled.

For the reasons set forth hereinabove, it is respectfully submitted that reargument, particularly on jurisdictional and federal question issues, is imperative, and that therefore an order should issue granting a reargument in the above-entitled matter before this Court.

Respectfully submitted,

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